

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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SHAW FAMILY ARCHIVES, LTD., EDITH :
MARCUS and META STEVENS, :
:
Plaintiffs, : Case No. 05 Civ. 3939 (CM)
:
-against- : Hon. Colleen McMahon
:
CMG WORLDWIDE, INC. and MARILYN :
MONROE LLC, :
:
Defendants. :
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DECLARATION OF TAL DICKSTEIN

TAL DICKSTEIN, pursuant to 28 U.S.C. § 1746, declares as follows:

1. I am associated with the firm Loeb & Loeb LLP, attorneys for defendant Marilyn Monroe LLC (“MMLLC”) in this matter. I am admitted to practice before this Court and respectfully submit this declaration in further support of Defendants / Consolidated Plaintiffs’ cross-motion for summary judgment on their public domain claim, and in opposition to Plaintiffs / Consolidated Defendants’ cross-motion to preclude Defendants / Consolidated Plaintiffs from asserting their public domain claim.

2. Attached as Exhibit A hereto is a true and correct copy of a January 18, 2008 email from Jonathan Strauss to Christopher Serbagi and David Marcus, which attached a draft pre-trial order. Pages 6-24 of the draft order contain 115 paragraphs of detailed facts supporting Defendants / Consolidated Plaintiffs’ (hereinafter, “Defendants”) public domain claim.

3. Plaintiffs served their third set of document requests on Defendants on November 1, 2007. Since that time, Defendants have produced substantial documents to Plaintiffs, many of which relate to Defendants' public domain claim. True and correct copies of cover letters evidencing these document productions are collected as Exhibit B hereto.

4. Attached as Exhibit C hereto is a true and correct copy of a Proof of Claim filed on February 1, 2008 in the Surrogates Court of the State of New York, County of Rockland, in the matter of *Estate of Larry Shaw*, File No. 2007-686. The Proof of Claim annexes a September 2, 2002 assignment of copyright interest from Larry Shaw to his sons.

5. Attached as Exhibit D hereto is a true and correct copy of the transcript of the deposition of Melissa Stevens, plaintiff Shaw Family Archives, Ltd.'s Rule 30(b)(6) witness, which took place on December 17 and 27, 2007.

6. Attached as Exhibit E hereto is a true and correct copy of an Opinion and Order dated March 23, 1999, entered in the case *Shaw v. Rizzoli Int'l Pubs., Inc.*, No. 96 Civ. 4259 (JGK), 1999 U.S. Dist. LEXIS 3233 (S.D.N.Y. Mar. 23, 1999), which was previously marked as exhibit 4 to the Melissa Stevens deposition.

7. Attached as Exhibit F hereto is a true and correct copy of a Rule 56.1 Statement filed in the case *Shaw v. Rizzoli Int'l Pubs., Inc.*, No. 96 Civ. 4259 (S.D.N.Y.), which contains excerpts of a deposition of Sam Shaw in connection with the case *Shaw v. St. Martin's Press, Inc.*, No. 93 Civ. 2871 (S.D.N.Y.), and which was previously marked as exhibit 5 to the Melissa Stevens deposition.

8. Attached as Exhibit G hereto is a true and correct copy of an article entitled “Marilyn’s New Life,” written by Jack Hamilton and containing photographs by Sam Shaw, which was published in Look magazine on October 1, 1957. This version of the article was produced to Plaintiffs on December 4, 2007 (*see* 12/4/07 cover letter, in Exhibit B hereto).

9. Attached as Exhibit H hereto is a true and correct copy of the cover page of the book *Marilyn Among Friends*, by Sam Shaw and Norman Rosten. As reflected on the cover page, the book was previously marked as exhibit 14 to the Melissa Stevens deposition.

10. Attached as Exhibit I hereto is a true and correct copy of a February 20, 2007 letter from Christopher Serbagi to Michelle M. Craven.

11. Attached as Exhibit J hereto is a true and correct copy of Defendant / Consolidated Plaintiffs Marilyn Monroe LLC’s First Set of Document Requests to Plaintiffs / Consolidated Defendants, dated December 28, 2006.

12. Attached as Exhibit K hereto are true and correct copies of a collection of correspondence involving Larry Shaw pertaining to his Notices of Claimed Infringement to eBay.

13. Attached as Exhibit L hereto is a true and correct copy of a stipulation between the parties to this action dated March 7, 2008.

14. Attached as Exhibit M hereto is a true and correct copy of Magistrate Judge Mark D. Fox’s Pre-Trial Discovery Order in this action, dated July 6, 2006.

15. Attached as Exhibit N hereto is a true and correct copy of a February 16, 2008 email from Christopher Serbagi to Tal Dickstein.

16. Attached as Exhibit O hereto is a true and correct copy of a stipulation between the parties to this action dated February 20, 2008

17. Attached as Exhibit P hereto is a true and correct copy of a stipulation between the parties to this action dated February 27, 2008

18. Attached as Exhibit Q hereto is a true and correct copy of the Declaration of Larry Shaw dated November 28, 2006, and exhibits B and C thereto.

19. Attached as Exhibit R hereto is a true and correct copy of an email from Paula Colbath to Christopher Serbagi and David Marcus, dated December 3, 2007.

20. Attached as Exhibit S hereto are true and correct copies of excerpts of the book *Marilyn Among Friends* produced by Plaintiffs in this litigation.

21. Attached as Exhibit T hereto is a true and correct copy of the registration certificate for U.S. Trademark Registration No. 1,509,758, bearing bates number MM-0013290, which was previously produced in this litigation prior to the January 1, 2007 discovery deadline.

22. Attached as Exhibit U hereto is a true and correct copy of a January 30, 1995 Notice of Acceptance from the U.S. Patent & Trademark Office whereby the above-referenced trademark was renewed, bearing bates number MM-0036542, which was previously produced in this litigation prior to the January 1, 2007 discovery deadline.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
March 25, 2008.


Tal Dickstein